

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-04-DL-047
Andrews Tower Rental, Inc.)	
Owner of Antenna Supporting Structure)	NAL/Acct. No. 200432500006
1058251 near Brownwood, Texas)	
Fort Worth, Texas)	FRN 0006139463
)	

FORFEITURE ORDER

Adopted: July 29, 2004

Released: August 2, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000) to Andrews Tower Rental, Inc. (“Andrews Tower”), owner of antenna structure 1058251 near Brownwood, Texas, for willful and repeated violation of Section 17.50 of the Commission’s Rules (“Rules”).¹ The noted violation involves Andrews Tower’s failure to clean and repaint its antenna structure to maintain good visibility.

II. BACKGROUND

2. On February 18, 2004, an agent from the Commission’s Dallas Office (“Dallas Office”) inspected Andrews Tower’s antenna structure number 1058251. The Antenna Structure Registration for this structure specifies that the structure must be painted. The agent observed that the paint bands were faded, dull, and discolored. The paint band marking had deteriorated over time, such that the bands could not be distinguished at a distance of one-fourth of a mile from the structure. The deteriorated condition of the marking significantly reduced the antenna structure visibility. The agent made additional observations of the antenna structure on February 19 and 20, 2004.

3. On February 24, 2004 and March 3, 2004, the agent interviewed John Andrews, Executive Vice President, of Andrews Tower. Mr. Andrews stated he planned to repaint the tower after some restructuring of the tower was completed. Construction on the tower, however, was not scheduled to commence until after the spring storm season.

4. On June 10, 2004, the Dallas Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Andrews Tower in the amount of ten thousand dollars (\$10,000).² Andrews Tower filed a

¹47 C.F.R. § 17.50.

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432500006 (Enf. Bur., Dallas Office, released June 10, 2004).

response to the *NAL* on July 9, 2004 seeking a reduction of the proposed forfeiture based on its efforts to comply with the Rules and the company's nearly 50-year history of operations. Andrews Tower asserts that it made arrangements with two different painting companies to have the tower repainted in 2003 but that both contractors failed to meet their commitments. Andrews Tower then hired a third contractor to complete the job. It states that there is a shortage of reliable painting crews in the area and that weather conditions in 2003 limited when painting could be completed safely. It also notes that Mr. Andrews and his wife both experienced serious health problems during 2002 and 2003, which required lengthy hospital stays and interfered with Mr. Andrews' ability to oversee the operations and maintenance of the tower. Finally, Andrews Tower states that the proposed forfeiture is its first fine or violation from the Commission

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Andrews Tower's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

6. Section 17.50 of the Rules requires antenna structures requiring painting to be cleaned or repainted as often as necessary to maintain good visibility.⁶ On February 18, 2004 through February 20, 2004, Andrews Tower's antenna structure 1058251 near Brownwood, Texas had severely faded, dull and discolored paint, making the bands indistinguishable at a distance of one-fourth of a mile from the structure and resulting in poor visibility of the structure's obstruction markings. Andrews Tower acknowledges that the tower needed painting at that time. We find that Andrews Tower's violation of Section 17.50 of the Rules was willful⁷ and repeated.⁸

7. Andrews Tower asserts that the forfeiture should be reduced because it placed orders to repaint the tower in 2003 prior to the agents' inspection. Although we do not believe that Andrews

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

⁶47 C.F.R. § 17.50.

⁷Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

Tower's efforts to comply are sufficient to justify canceling the forfeiture, we do believe that those same efforts constitute good faith on its part that merit a reduction of the proposed forfeiture.⁹

8. Finally, Andrews Tower argues the forfeiture should be reduced because it has not received a Notice of Forfeiture prior to this *NAL*. After considering Andrews Tower's past history of compliance, we conclude that a further reduction of the forfeiture amount is appropriate.¹⁰

9. We have examined Andrews Tower's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Andrews Tower willfully and repeatedly violated Section 17.50 of the Rules and find that, although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$6,000 is appropriate based on Andrews Tower's good faith efforts to comply and its past history of compliance with the Rules.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹¹ Andrews Tower Rental, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for willfully and repeatedly violating Section 17.50 of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200432500006, and FRN 0006139463. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

12. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to John Andrews, President, Andrews Tower Rental, Inc., 1420 Layton Avenue, Fort Worth, TX, 76117.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁹See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964 (2003).

¹⁰See *South Central Communications Corp.*, 17 FCC Rcd 22701 (Enf. Bur. 2002).

¹¹47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹²47 U.S.C. § 504(a).

¹³See 47 C.F.R. § 1.1914.